

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:  
Director of Planning & Building  
County Government Center, Rm. 300  
San Luis Obispo, CA 93408

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APN: \_\_\_\_\_

COUNTY OF SAN LUIS OBISPO

AFFORDABILITY AGREEMENT

THIS COVENANT AND AGREEMENT made and entered into this day of \_\_\_\_\_, by and between the COUNTY OF SAN LUIS OBISPO (the "County" or "Lender") and \_\_\_\_\_ (collectively referenced herein as "Owner").

RECITALS

A. The County has loaned to Owner State CalHome Program funds for purchase of that certain real property located at \_\_\_\_\_, in the County of San Luis Obispo, as described in Exhibit A attached hereto and incorporated herein as the "Property."

B. Owner intends to purchase the Property for the purpose of establishing Owner's principal residence on the Property.

C. The County and Owner desire to assure this housing meets the definition set forth in the California Health and Safety Code Section 50079.5 (Lower Income) and remains affordable for a period of thirty (30) years.

D. To protect the investment of public funds and to provide for continued homeownership opportunities for Eligible Households, this Agreement provides for recovery of the County's investment.

E. The Owner has qualified for assistance to purchase the Property with the Owner's combined household income at or below eighty percent (80%) of the Area Median Income, adjusted for actual household size (a "Lower Income Household").

F. In addition to this Agreement, to protect the investment of public funds and

to further the goal of providing housing for Lower Income Households, the Owner is required to execute one promissory note (collectively referred to as the "Note") in favor of the County.

G. This Agreement and the Note shall be secured by a deed of trust in a second lien position (collectively referred to as the "County Deed of Trust") subordinate to the lien of that certain deed of trust (the "First Lender's Deed of Trust") executed by the owner in favor of \_\_\_\_\_, as beneficiary (the "First Lender"), securing a loan made by the First Lender to the Owner in the amount of \_\_\_\_\_

NOW THEREFORE, the County and Owner acknowledge and agree as follows:

## 1. DEFINITIONS

1.01. "Persons and families of low income" means persons and families whose income does not exceed eighty percent (80%) of area median income adjusted for family size by California Department of Housing and Community Development ("HCD").

1.02. Persons and families meeting the definitions under Section 1.01 shall be referred to as "Eligible Households."

1.03. "Area Median Income" shall refer to the annual median income adjusted for household size, in the San Luis Obispo - Atascadero - Paso Robles Primary Metropolitan Statistical Area as published by HCD, or, in the event such income determination is no longer published by HCD, or has not been updated for a period of at least 18 months, the County may use or develop such other reasonable method as it may choose in order to determine the median yearly income in San Luis Obispo County.

## 2. TERM OF THE AGREEMENT

These affordability requirements shall be covenants running with the land as defined in California Civil Code Section 1460. Pursuant to Civil Code Section 1468 which governs such covenants, the provisions of this Agreement shall be binding upon all parties having any right, title, or interest in any of the properties described herein, or any portion thereof and on their heirs, successors in interest and assigns for a period of thirty (30) years from the date of recordation of this Agreement. The County and Owner agree that all future deeds or transfers of interest regarding the subject Property shall show the restrictions of this Agreement for as long as the Agreement is in effect. The Owner, by and for himself or herself and any successors in interest, covenants and agrees that for the period of time specified in this Agreement there shall be no sale, lease, rental or other transfer of the Property except after written notice thereof given to the County at least sixty (60) days prior thereto, which notice shall specify the terms and conditions of the proposed transfer, the identity of the proposed transferee and whether such proposed transferee is an Eligible Household. ANY SALE, LEASE, RENTAL OR OTHER TRANSFER OF THE PREMISES IN VIOLATION OF THIS COVENANT SHALL BE VOID.

## 3. OWNER CERTIFICATIONS

The Owner certifies that (a) the financial and other information previously provided in order to qualify to purchase the Property is true and correct as of the date first written above; (b) the Owner does not own any other residential property as of the date of this Agreement; and (c) the Owner or Members of the Owner's Immediate Family shall occupy the Property as their principal place of residence. Members of the Owner's Immediate Family shall include the Owner's spouse, parents, parents-in-law and children, provided such Members of the Owner's Immediate Family meet the definition of a Low Income Household pursuant to this Agreement. The Owner shall be considered occupying the Property if the Owner is living in the unit for at least ten (10) months out of each calendar year. The County may grant a temporary waiver of this occupancy requirement for good cause in its sole discretion.

The Owner shall annually, on the anniversary of the date of the execution of this Agreement, certify in writing to the County, on a form supplied by the County, that:

- (i) the Owner occupies the Property as the Owner's principal place of residence; and
- (ii) the Property is in good repair.

#### 4. LEASING AND USE OF PROPERTY

The Owner shall not lease or rent the Property in its entirety. Any lease or rental, where the Owner is not residing in the house as a principal place of residence, is in violation of this Agreement and prohibited, and shall constitute a default by the Owner hereunder. However, a portion of the Property may be leased or rented as long as the Owner is retaining the Property as its principal residence.

#### 5. SALE RESTRICTIONS

Any Transfer of the Property will be subject to the provisions of this Agreement. "Transfer" means any sale, assignment or transfer, voluntary or involuntary, of any interest in the Property, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Property is transferred and Owner retains title. Any Transfer without satisfaction of the provisions of this Agreement is prohibited. Transfers by gift, devise, or inheritance to an existing spouse who is also an obligor under the Note; by an Owner to a spouse where the spouse becomes the co-owner of the Property; to a spouse who is also an obligor under the Note, as part of a dissolution proceeding; by the Owner into an inter vivos trust in which the Owner is the beneficiary; or a transfer to a Member of the Owner's Immediate Family shall not be considered a Transfer for the purposes of this Agreement.

#### 6. FAIR MARKET VALUE

If it is necessary to determine the fair market value of the Property (the "Fair Market Value"), it shall be determined by a real estate appraiser. The appraisal shall be made by an independent residential appraiser selected by the Owner, from a list of appraisers provided by the County. Each appraiser on the County's list shall have been previously

approved by the Federal National Mortgage Association (Fannie Mae or FNMA) or the Federal Housing Administration (FHA) and placed on their respective lists of approved residential property appraisers. If possible, the appraisal shall be based upon the sales prices of comparable properties sold in the market area during the preceding three-month period. The cost of the appraisal shall be borne by the Owner. In the event that the Owner has made capital improvements to the Property which have increased the value of the Property or if damage or deferred maintenance has occurred while the Owner owned the Property which has decreased the value of the Property, the appraisal shall specifically ascribe a value to these adjustment factors and state what the fair market value of the Property would be without such adjustments. Nothing in this Section shall preclude the Owner and the County from establishing the Fair Market Value of the Property by mutual agreement in lieu of an appraisal pursuant to this Section.

## 7. TRANSFER BY OWNER

The Owner may sell the Property to a person of the Owner's choosing (the "Proposed Purchaser") by satisfying the terms set forth in this Section.

Upon Transfer the Owner shall (a) pay all of the principal and interest due to the First Lender, (b) recover the downpayment and the Value of Improvements, if any, less the value of any Needed Repairs on the Property, and, (c) pay to the County all principal and interest on the Note. Needed Repairs shall mean those repairs required to fix any damages to the Property, as determined by the County. Value of Improvements shall mean the value of any substantial structural or permanent fixed improvements which value shall be determined by an appraisal, performed at the Owner's expense, made by an independent residential appraiser selected by the Owner, from a list of appraisers provided by the County. Each appraiser on the County's list shall have been previously approved by the Federal National Mortgage Association (Fannie Mae or FNMA) or the Federal Housing Administration (FHA) and placed on their respective lists of approved residential property appraisers.

## 8. ENCUMBRANCES

If Owner further encumbers the Property, except for the First Lender's Deed of Trust and the County Deed of Trust, the Owner shall repay the County Loan in accordance with Section 5(b) of the Note (Repayment) and Section 8 (Notice Required) of the Note.

## 9. DEFAULTS AND REMEDIES

Upon a violation of any of the provisions of this Agreement by the Owner, the County may give written notice to the Owner consistent with the provisions in Section 10 of the County Deed of Trust (Default; Remedies). If the violation is not corrected to the satisfaction of the County within a reasonable period of time, not longer than thirty (30) days after the date the notice is mailed, or within such further time as the County determines is necessary to correct the violations, the County may declare a default under this Agreement. Upon the declaration of a default or if the Owner makes any

misrepresentation in connection with receiving any benefits under this Agreement, the County may: (a) declare all amounts due under the Note immediately due and payable without further demand and may invoke the power of sale under the Deed of Trust; and (b) apply to a court of competent jurisdiction for specific performance of this Agreement, for an injunction prohibiting a proposed sale or transfer in violation of this Agreement, for a declaration that a transfer in violation of this Agreement is void, and for any such other relief at law or in equity as may be appropriate.

#### 10. NOTICE OF DEFAULT AND FORECLOSURE

A request for notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering the Property shall be recorded by the County in the Office of the Recorder of San Luis Obispo County for the benefit of the County. The County may declare a default under this Agreement upon receipt of any notice given to the County pursuant to Civil Code Section 2924b, and may exercise its rights as provided in Section 10 (Defaults and Remedies).

In the event of default and foreclosure, the County shall have the same right as the Owner to cure defaults and redeem the Property prior to the foreclosure sale. Nothing herein shall be construed as creating any obligation of the County to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

#### 11. RESTRICTIONS ON FORECLOSURE PROCEEDS

If a creditor acquires title to the Property through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the Owner shall not be entitled to the proceeds of sale to the extent that such proceeds of such sale exceed the proceeds paid or credited to the creditor until the County has received the amount of principal and interest due the County on its Note. The Owner shall instruct the holder of such excess proceeds to pay such proceeds to the County as repayment for, and in consideration of, the financial assistance provided in the development of the Property.

#### 12. BINDING ON SUCCESSOR AND ASSIGNS

This Agreement shall bind, and the benefit and burdens hereof shall inure to, the Owner, his or her heirs, legal representatives, executors, successors-in-interest and assigns, and to the County and its successors, until the earlier of (a) the end of the Term of this Agreement, or (b) the date of a Transfer of the Property.

#### 13. SUPERIORITY OF AGREEMENT

The Owner covenants that he or she has not, and will not, execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that, in any event, this Agreement is controlling as to the rights and obligations between and among the Owner, the County and their respective successors.

#### 14. RIGHTS OF BENEFICIARIES UNDER DEEDS OF TRUSTS

Notwithstanding any other provision hereof, this Agreement shall not diminish or affect the rights of the First Lender under the First Lender's Deed of Trust and the provisions of this Agreement shall be subordinate to the lien of the First Lender's Deed of Trust and shall not impair the rights of the First Lender, or such lender's assignee or successor-in-interest (including but not limited to HCD, FNMA, Freddie Mac, the Veterans Administration, or the California Housing Finance Agency, if applicable), to exercise its remedies under the First Lender's Deed of Trust in the event of default under the First Lender's Deed of Trust by the Borrower. Such remedies under the First Lender's Deed of Trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed in lieu of foreclosure, this Agreement shall be forever terminated and shall have no further effect as to the Property or any transferee thereafter; provided, however, if the holder of such First Lender's Deed of Trust acquired title to the Property pursuant to a deed or assignment in lieu of foreclosure, this Agreement shall automatically terminate upon such acquisition of title, provided that (a) the County has been given written notice of default under such First Lender's Deed of Trust, and (b) the County shall not have cured the default under such First Lender's Deed of Trust within the 30-day period provided in such notice sent to the Lender, or commenced to cure the default within such 30-day period and given its firm commitment to complete the cure in form and substance acceptable to the First Lender.

If, during the original Term of this Agreement, the owner of record before the termination event, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Property, this Agreement shall be revived according to the original provisions.

#### 15. INVALID PROVISIONS

If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

#### 16. CONTROLLING LAW

The terms of this Agreement shall be interpreted under the laws of the State of California.

#### 17. NOTICES

All notices required herein shall be sent by certified mail, return receipt requested or express delivery service with a delivery receipt, and shall be deemed to be effective as of the date received or the date delivery was refused as indicated on the return receipt as follows:

To the Owner;

\_\_\_\_\_

To the County;

Director of Planning and Building  
County of San Luis Obispo  
County Government Center, Rm. 300  
San Luis Obispo, CA 93408

The parties may subsequently change addresses by providing written notice of the change in address to the other parties in accordance with this Section (Notices).

#### 18. INTERPRETATION OF AGREEMENT

The terms of this Agreement shall be interpreted so as to avoid speculation on the Property and to ensure to the extent possible that its sales price and mortgage payment remain affordable to persons and families of lower income.

#### 19. EXHIBITS

Any exhibits referred to in this Agreement are incorporated in this Agreement by such reference.

IN WITNESS WHEREOF, Borrower has executed this Affordability Agreement on the day and year set forth above. By signing below, Borrower agrees to the terms and conditions as set forth above.

\_\_\_\_\_  
Owner\*

\_\_\_\_\_  
Owner\*

Date \_\_\_\_\_

Date \_\_\_\_\_

\* Signatures must be notarized

State of California )  
 ) ss.  
County of \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_,

personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
Signature of Notary Public

(Seal)

State of California )  
 ) ss.  
County of \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_,

personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
Signature of Notary Public

(Seal)



COUNTY OF SAN LUIS OBISPO:

By: \_\_\_\_\_  
Kami-Lynn Griffin  
Acting Director of Planning and Building

Dated: \_\_\_\_\_

State of California )  
County of \_\_\_\_\_ ) ss.

On \_\_\_\_\_, before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
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person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
Signature of Notary Public

(Seal)

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL  
County Counsel

By: \_\_\_\_\_  
Deputy County Counsel

Dated: \_\_\_\_\_

EXHIBIT "A"  
(LEGAL DESCRIPTION)

All that certain real property situated in the County of San Luis Obispo, State of California, described as follows:

APN: \_\_\_\_\_

CERTIFICATE

This is to certify that the interest in real property conveyed by the Deed of Trust dated \_\_\_\_\_ from \_\_\_\_\_ to the County of San Luis Obispo, a political subdivision of the State of California, is hereby accepted by the undersigned officer or agent on behalf of the Board of Supervisors of the County of San Luis Obispo pursuant to the authority conferred by Board of Supervisors' Resolution 2011-361 adopted on November 1, 2011, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

County of San Luis Obispo

\_\_\_\_\_  
Kami-Lynn Griffin  
Acting Director of Planning and Building

State of California )  
County of \_\_\_\_\_ ) ss.

On \_\_\_\_\_, before me, \_\_\_\_\_,

personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
Signature of Notary Public

(Seal)